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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,755	02/04/2004	John Brotzman	BAC-002	3649

35557 7590 09/07/2005

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EXAMINER
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FOX, JOHN C

ART UNIT	PAPER NUMBER
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3753

DATE MAILED: 09/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Tate

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/771,755	BROTZMAN, JOHN	
	<b>Examiner</b>	<b>Art Unit</b>	
	John Fox	3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☒ Claim(s) 6-11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>1/14/05</u>   | 6) <input type="checkbox"/> Other: _____                                    |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Generke in view of Bachmann '169, of record.

Generke teaches a valve operator for producing a rotary motion including a screw 94 and follower 134 for moving crank 118, which is keyed to shaft 28, see Figures 7-8. Generke does not teach actuating a diverter with a toggle tube. Bachmann shows a diverter valve using a toggle tube 47. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have used the actuator of Generke to operate the diverter valve of Bachmann in view of the readily apparent equivalence of the rotary actuators.

Claims 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Generke in view of Bachmann as applied above and further in view of Lutz.

Generke, as modified, shows the claimed device except for a ball screw and the output shaft being journalled in openings in the sidewalls of the housing. Lutz shows a similar mechanism with those features. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have used such a ball screw for the follower 134 of Generke to reduce friction and to have used such journals to better support the output shaft of Generke.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Generke in view of Bachmann as applied above and further in view of Brazil et al.

Generke, as modified, teach the claimed device but discloses any type of power source to rotate the screw. Brazil et al show a variable frequency motor to drive a rotary device. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have used such a motor to drive the actuator of Generke, as modified, to provide rotation of the screw.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Generke in view of Bachmann as applied above and further in view of Weber.

Generke, as modified, shows the claimed device except for a lockout. Weber shows a ball screw mechanism with a lockout 58/50 to prevent unwanted motion of the actuator. It would have been obvious for one of ordinary skill in the art at the time the invention was made to have used such a lockout on the device of Generke, as modified, to similarly prevent unwanted motion of the drive thereof.

Claims 6-11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Fox whose telephone number is 571-272-4912. The examiner can normally be reached on Increased Flextime.

Art Unit: 3753

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Mancene can be reached on 571-272-4930. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
John D. Fox  
Primary Examiner  
Art Unit 3753